



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 19, 2022

IN THE MATTER OF:

Appeal Board No. 624130

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 624129, 624130 and 624131, the claimant appeals from the decisions of the Administrative Law Judge filed May 31, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 30, 2020 through May 2, 2021 on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$13,104 in regular unemployment insurance benefits recoverable pursuant to Labor Law §

597 (4), \$14,700 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020, \$14,112 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 432 effective days and charging a civil penalty of \$6,287.40 on the basis that the

claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

The Board considered the arguments contained in the written statement submitted by the claimant and on behalf of the employer.

In Appeal Board No. 624129, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge regarding the issue of lack of total unemployment and/or having earnings that exceeded the statutory limitation are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board Nos. 624130 and 624131, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: Between March 30, 2020 through May 2, 2021, the claimant, a member of a union, worked for this employer school district pursuant to a 12 month contract. He was paid over \$504 per week through the week ending June 21, 2020 and commencing the week ending September 20, 2020. He did not work for this employer during the summer break of the 2020-2021 school year. This summer break began with the week of June 22, 2020 and ran through the week ending September 13, 2020, for a total of 12 weeks. His last pay was in June at the close of the school year and was a balloon payment which he was expected to manage until school and his work started up again in September.

Between March 30, 2020 through May 2, 2021, the claimant certified each week stating that he worked zero days and that he did not earn more than \$504. He received \$13,104 in regular unemployment insurance benefits, \$14,700 in FPUC benefits; \$14,112 in PEUC benefits; and \$1,800 in LWA benefits.

OPINION: As we have found that the claimant was not totally unemployed and/or had earnings over the statutory limitation, we conclude that the claimant was overpaid the regular unemployment benefits and the federal benefits he received. Per federal law, the federal benefits are recoverable.

As to the regular benefits, the credible evidence establishes that the claimant's certifications that he was not working and did not earn more than \$504 for the period from March 30, 2020 through the week ending June 21, 2020 and for the period beginning September 14, 2020 onward were factually false. Therefore, we further conclude that the regular benefits during this period

are recoverable. In addition, as he was aware that he worked and earned over \$504, we further conclude that his certifications constitute willful misrepresentations, and he was properly assessed forfeit and civil penalties.

However, for the week ending June 28, 2020 through the week ending September 13, 2020, the basis for the recoverability of benefits was that he did not accept the benefits in good faith because although he was not working during the summer, he was covered in his union contract which covers 12 months with 10 months of payments. Bad faith requires that the claimant accepted the benefits knowing without any doubt that he is not entitled to such benefits (See Appeal Board Nos. 552896, 616938, 615697 and 613861). The record herein contains no evidence the claimant knew or should have known that she accepted these benefits in bad faith (See Appeal Board No. 618956). Any expectation that the claimant was supposed to spread out his balloon payment over these 12 weeks is not the same as knowledge that he had to declare this balloon payment as pay earned each week for the week ending June 28, 2020 through the week ending September 13, 2020 in the summer break. Under these circumstances, we further conclude that that claimant's certifications were neither willfully nor factually false statements. Therefore, the regular benefits that he received are not recoverable and he is not subject to forfeit and civil penalties for this period

DECISION: In Appeal Board No. 624129, the decision of the Administrative Law Judge is affirmed.

In Appeal Board No. 624129, the initial determination, holding the claimant ineligible to receive benefits, effective March 30, 2020 through May 2, 2021 on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation, is sustained.

In Appeal Board No. 624130, the decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

In Appeal Board No. 624130, the initial determination, charging the claimant with an overpayment of \$13,104 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$14,700 in Federal Pandemic

Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020,

\$14,112 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), is modified in accordance with this decision, and as so modified, is sustained.

The amount of the recoverable overpayment in regular unemployment insurance benefits is referred back to the Department of Labor for recalculation.

In Appeal Board No. 624131, the decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

In Appeal Board No. 624131, the initial determination, reducing the claimant's right to receive future benefits by 432 effective days and charging a civil penalty of \$6,287.40 on the basis that the claimant made willful misrepresentations to obtain benefits, is modified in accordance with this decision, and, as so modified, is sustained.

The amounts of the forfeit penalty and the civil penalty are referred back to the Department of Labor for recalculation in accordance with this decision.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER